IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.34 OF 2005
IN
CONTEMPT PETITION NO.98 OF 1986

Godilal Dhanrpji Shah(deceased)
1.Mahendra G. Jain & Ors. ..Applicants.

V/s.

Dawoodali R. Versi(deceased)
Mohammedali D. Versi & Ors. ..Respondents.

Mr.M.P.Vashi i/b. M/s. M.P.Vashi & Assoc.for petitioner.

Mr.P.N.Karlekar for respondents.

CORAM: A.M.KHANWILKAR,J

DATE : MARCH 12, 2007.

P.C. :

1. Heard counsel for the parties.

2. This application is contested only in relation to the reliefs (b) and (c). Reliefs (b) and (c) of the application reads thus:

> (b) That the Court Receiver, High Court, Mumbai, who was appointed Receiver vide order dated 25.7.1986 passed by the then Justice Shri Pratap, be ordered to be discharged without passing accounts;
>
> (c) That the monies deposited in the court by original Respondent No.2 towards the compensation may be ordered to be paid over to the Petitioner Nos. 4 to 8;

For considering this claim put forth by the applicants who are heirs and legal representatives of the original respondent No.2, it is relevant to note that admittedly respondent No.2 was in possession of the disputed property when the Court Receiver was appointed by this Court on 24th July, 1986. The Court Receiver proceeded to take possession of the disputed property in terms of the order passed by this Court from respondent No.2. These facts are not disputed. The appointment of court receiver is continued till now.

3. According to the original contempt petitioner, respondent no.2 who was later on appointed as agent of the Court Receiver, after his death, the property should revert back to the court receiver, who in turn should hand over possession thereof to the original contempt petitioner. It is not possible to accept this submission. As mentioned earlier, it is not in dispute that the Court Receiver took possession of the disputed property in terms of order dated 24th July, 1986 from respondent No.2. Indeed, later on respondent No.2 was allowed to remain in possession as agent of the Court Receiver. The respondent No.2 having expired, the applicants who are heirs and legal representatives of the

deceased respondent No.2 are entitled to claim to remain in possession of the property having regard to the subsequent developments, which have now been placed on record. In that, the original petitioner instituted execution application pursuant to the decree passed by the Rent Court. The execution application however, has now been dismissed as being barred by limitation in terms of order dated 2nd September, 1993. That decision has become final. In other words, the original contempt petitioner cannot legitimately claim to have come in the possession of the disputed property, having failed in execution proceeding. The Contempt Petitioner has ceased to possess any right in respect of the disputed premises after the decision in the Execution proceeding that the same was barred by limitation. That is the effect of section 27 of the Limitation Act. In such peculiar circumstances, the applicants being heirs and legal representatives of the respondent No.2 from whom the Court Receiver had taken possession of the disputed property ought to succeed; as, in law, the Court Receiver would be obliged to put back in possession the person from whom possession of the disputed property was initially taken by him, if the Court was to discharge the Court Receiver.

4. In the circumstances, the application filed by the heirs and legal representatives of original respondent no.2 will have to succeed in terms of prayer clause (b) and (c). Ordered accordingly.

5. All the concerned to act on the authenticated copy of the order.